

REMARKS

The Examiner is thanked for the thoroughness of the Office action.

Claims 1-9 are rejected under 35 USC §102(b) based upon an alleged public use or sale of the invention by IEX, the assignee. Respectfully, this rejection is traversed. As set forth in the Declaration of Paul H. Leamon submitted under 37 CFR 1.132, an initial version of the TotalView product with the schedule bidding function was available in late 2001, however, that initial version is not the subject of the claims here. Several years later, another version of the product with the schedule bidding function was introduced by IEX. In particular, this enhanced version (which is the subject of the disclosure and the claims) was released in April 2003. Only the April 2003 version of the schedule bidding function is described and claimed in this application. Thus, and as confirmed by Mr. Leamon's declaration, the enhanced version of the schedule bidding function was not on sale or in public use more than one (1) year prior to the filing date of this application, i.e., prior to February 10, 2003, and the IEX commercial activities vis-à-vis this enhancement were not prior art under 35 USC 102(b).

The early version of the schedule bidding function is prior art under 35 USC 102(b), but as Mr. Leamon points out, that version did not include at least the following functions as recited in each of claim 1 and claim 9:

“during a given time period, enabling each of a set of entities, irrespective of their seniority or ranking in the work environment, to use a [or “the”] client computer to identify a given schedule pattern set and to identify a set of one or more bids with respect to one or more schedules that are associated with that given schedule pattern set.”

“[assigning] the given set of the entities to one or more candidate schedules that are associated with the given schedule pattern set.”

Mr. Leamon's declaration also explains the importance of these limitations and how the enhanced version of the schedule bidding feature addressed the problems of the early version. Mr. Leamon's statements are incorporated herein by reference, and they establish the significant differences between the claimed invention here and the early version, which is not the subject of this application. Mr. Leamon's declaration also

explains the lack of significance of the articles that were cited by the Examiner in the Office action.

Claims 1-9 are rejected under 35 USC §102(e) as being anticipated by Narasimhan et al, U.S. Publication No. 2005009692. This rejection is also traversed, as there was a prior invention. As set forth in the Declaration of Meghan M. Barni, the sole named inventor, the conception of the claimed subject matter took place in 2002 (actual date redacted), and the reduction to practice of the claimed subject matter was complete no later than April 2003, when TotalView Release 3.5.1 including the feature was introduced by IEX as an official software release of the Company. The conception and reduction to practice pre-date October 31, 2003, the earliest priority date of the Narasimhan publication. (Applicant does not concede that Narasimhan is entitled to this priority date).

The Narashimhan publication should be removed as prior art due to the prior invention of the subject matter disclosed and claimed.¹ See, 37 CFR 1.131.

The undersigned acknowledges the Examiner's request for additional IEX documentation on the schedule bidding function. This request is believed to be addressed by the submission of the materials that accompany the Barni declaration and the discussion regarding the commercial introduction of the enhanced schedule bidding feature no earlier than April 2003. If the Examiner needs additional information, he is requested to contact the undersigned directly.

Claims 1 and 9 have been amended for clarity and to further emphasize the automated nature of the recited functions. No new matter has been included. These claims recite patentable subject matter.

Dependent claims 2-8 are patentable for the same reasons advanced with respect to claim 1 from which they depend.

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¹ As the published claims are best understood, the Narasimham publication does not claim the same or substantially the same invention as that claimed here in part due to the limitations referenced above and in Mr. Leamon's declaration (and that are not present in Narasimham claims).

Accordingly, a Notice of Allowance is requested.

Respectfully submitted,

/David H. Judson/

By: _____
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